

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6296 of 1996

with

SPECIAL CIVIL APPLICATION NO.6297 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN

and

MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

PATEL JAGDISH NATWARBHAI

Versus

DIST EDUCATION OFFICER

Appearance:

MR NR TANDEL for Petitioner

MR HASURKAR, FOR MR AD OZA for Respondents No.1 & 2

MR MA BUKHARI, A.G.P. for respondents no.3 & 4 in
Special Civil Application no.6296/96.

MR VB GHARANIA, A.G.P. for respondents no.3 & 4 in
Special Civil Application no. 6297/96.

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and

MR.JUSTICE J.M.PANCHAL

Date of decision: 05/03/98

(Per : Panchal.J.) :-

Both these petitions involving common question of law are based on identical facts and, therefore, both the Special Civil Applications are disposed of by this common order.

2. An advertisement inviting applications for the post of teachers in the Primary Section was issued in daily newspaper "Sandesh" on September 22, 1994. In response to the said advertisement, the petitioners had made applications for appointment as primary teachers. The last date for submission of the applications was within a period of 15 days from the date of issuance of the advertisement. There is no dispute regarding academic qualifications of the petitioners, but the controversy pertains to the age requirement. As per the advertisement, the age requirement was that the candidate should have completed 18 years of age as on July 1, 1994. The date of birth of the petitioner in Special Civil Application no. 6296/96 is July 12, 1976; whereas the date of birth of petitioner in Special Civil Application no. 6297/96 is July 24, 1996. Thus, admittedly, the petitioners had not attained the age of 18 years as on July 1, 1994. Both the petitioners were called for interview vide call letters dated January 3, 1996. The grievance of the petitioners is that though they are qualified to be appointed to the post of primary teachers, they have not been so appointed by the respondents. Under the circumstances, the petitioners have filed present petitions under Article 226 of the Constitution and prayed to issue a writ of mandamus or any other appropriate writ or order directing the respondents to appoint the petitioners as primary teachers.

3. Mr. Gulabbhai Patel, District Primary Education Officer has filed affidavits-in-reply on behalf of respondent no.1 controverting the averments made in the petitions. In the reply affidavits it is mentioned that in the advertisement itself it was stated that the eligibility limit was 18 years as on July 1, 1994 and as the petitioners had not completed 18 years of age on July 1, 1994, they were not entitled to be appointed as primary teachers. By filing affidavits-in-reply, the deponent has demanded dismissal of the petitions.

4. The petitioners have filed affidavits-in-rejoinder reiterating what is stated by them in the petitions and prayed the Court to grant

relief claimed in the petitions.

5. Learned Counsel for the petitioners submitted that in view of the provisions of Rule-4 of the Gujarat Panchayats Service (Recruitment of Primary Teachers) Rules, 1970 ("Rules" for short) as amended in 1979, the date of advertisement should be considered as relevant date for satisfying the criteria regarding age limit and as the petitioners had attained age of 18 years on the date of issuance of advertisement, the reliefs claimed in the petitions should be granted. It was pleaded that the word "recruitment" used in proviso to rule-4 of the Rules should mean appointment to the post concerned and as the petitioners had attained age of 18 years by the time appointments were made, necessary directions should be given to the respondents to appoint the petitioners as primary teachers. What was claimed on behalf of the petitioners was that the respondents have committed an error in fixing the date of July 1, 1994 in the advertisement, which is illegal as well as invalid and, therefore, the petitions should be allowed.

6. Mr. S.P. Hasurkar, learned Counsel appearing for Mr. A.D.Oza, learned advocate on record for respondents no.1 & 2 as well as Mr. M.A.Bukhari, learned A.G.P. appearing for respondents no.3 & 4 submitted that the word "recruitment" used in the proviso to rule-4 of the Rules cannot mean appointment and, therefore, prescription of date in the advertisement being legal and valid, the petitions should be dismissed. It was asserted on behalf of the respondents that no error worth the name was committed by the respondents in fixing the date as July 1, 1994 in the application forms to be submitted pursuant to the advertisement and, therefore, the petitioners are not entitled to the reliefs claimed in the petitions. In support of their submissions, learned Counsel placed reliance on the decisions rendered in (1) YOGENDRAKUMAR RATILAL RAVAL & ORS. v. STATE OF GUJARAT & ANR. 1994(1) G.L.R. 361, (2) PATEL JATINKUMAR HIRABHAI CHANRALA v. DISTRICT PRIMARY EDUCATION OFFICER, AHMEDABAD & ANR. 1997(2) GLH 75, and (3) ASHOK KUMAR SHARMA & OTHERS v. CHANDER SHEKHAR & ANOTHER, JT 1997(4) SC 99.

7. In order to resolve the controversy raised in the petition, it would be relevant to notice Rule-4 of the Rules which reads as under :-

"4. Qualification of candidates: To be eligible for appointment, a candidate must-

- (a)(1) be not less than eighteen years of age and not more than twenty eight years of age,
- (ii) in the case of candidates belonging to a Scheduled Castes or a Scheduled Tribe, be not less than 18 years and not more than 30 years of age, and

EXPLANATION: For the purpose of this rule, a candidate shall be deemed to have attained the age limit. If he attains such age limit before the first July of the year in which the recruitment is made.

- (b) have passed any one or more of the qualifying examinations specified in Schedule-I annexed to these rules.

Provided that the Committees, may, if the candidates fulfilling the qualifications specified in clauses (a) and (b) are not available, relax the qualifications specified in Clauses (a) and (b) with the prior approval of the State Government".

A bare reading of the above-referred to rule makes it abundantly clear that to be eligible for appointment, a candidate should not be less than 18 years of age. The explanation appended to rule-4(a) makes it evident that for the purposes of said rule, a candidate should be deemed to have attained the age limit, if he attains, such age limit before 1st of July of the year in which the recruitment is made. The contention that the phrase "the first July of the year in which the recruitment is made" should be construed as the year in which actual appointments are made, is without substance and cannot be accepted. The reason is simple and it is that if the phrase "year in which the recruitment is made" as mentioned in the explanation appended to the rule is interpreted to mean the year in which the actual appointments are made, large number of candidates, who are eligible on the date of application, may find themselves eliminated at the final stage for no fault of theirs.

8. In the case of A.P. PUBLIC SERVICE COMMISSION vs. B. SHARATCHANDRA, 1990(2) S.C.C. 669, rule-5 of the A.P. Police Service Rules was under consideration of the Apex Court. An advertisement was issued by the Public Service Commission inviting applications for selection in a Combined Competitive Examination which was to be held in November, 1983 for recruitment to the posts included in Grade-I Services. The notification was published on August 25, 1983. The respondent had applied for the post

of Deputy Superintendent of Police. The minimum age prescribed for selection to the post of Deputy Superintendent of Police was 21 years as on July 1, 1983. The respondent was short by 19 days in attaining the age of 21 years on July 1, 1983 and, therefore, his case was not considered for appointment to the post of Deputy Superintendent of Police. It was his contention that the date for attaining the minimum age prescribed was contrary to rule-5 of A.P. Police Service Rules, 1966 and that such date ought to have been the date of preparation of the list of selected candidates and not any date anterior to it. The Apex Court while negating the contentions has observed as under :-

"If the word 'selection' is understood in a sense

meaning thereby only the final act of selecting candidates with preparation of the list for appointment, then the conclusion of the Tribunal may not be unjustified. But, round phrases cannot give square answers. Before accepting that meaning, we must see the consequences, anomalies and uncertainties that it may lead to. The Tribunal in fact, does not dispute that the process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Rule 3 of the Rules of Procedure of the Public Service Commission is also indicative of all these steps. When such are the different steps in the process of selection, the minimum or maximum age for suitability of a candidate for appointment cannot be allowed to depend upon any fluctuating or uncertain date. If the final stage of selection is delayed and more often it happens for various reasons the candidates who are eligible on the date of application may find themselves eliminated at the final stage for no fault of theirs. The date to attain the minimum or maximum age must, therefore, be specific and determinate as on a particular date for candidates to apply and for recruiting agency to scrutinise applications. It would be, therefore, unreasonable to construe the word selection only as the factum of preparation of the select list. Nothing so bad would have been intended by the

rule-making authority."

In view of the above quoted dictum of the Supreme Court, there is no manner of doubt that process of recruitment starts with the date on which advertisement inviting applications is issued and this process of recruitment ultimately culminates into appointment on the basis of select list. Therefore, the year of recruitment will have to be treated as 1994. Under the circumstances, we are of the opinion that prescription of age as on 1.7.1994 was perfectly in consonance with the statutory rules as well as principle enunciated by the Supreme Court and no error was committed by the respondent in specifying that on 1.7.1994, a candidate should have completed 18 years of age.

9. Again, in the case of Ashok Kumar & Others (Supra) applications were called for by an advertisement dated January 9, 1982 for appointment to the post of Junior Engineer in the service of the Jammu and Kashmir State. The last date for submitting applications was specifically stated as July 15, 1982. The minimum educational qualifications were also prescribed in the said advertisement. A number of persons had applied pursuant to the said advertisement. Out of them, 33 persons had not passed B.E.(Civil) Examination on or before July 15, 1982, though they had appeared for the said examination earlier to the said date, but the results were published only on August 21, 1982. Pursuant to the advertisement, interviews were held on various dates commencing on August 24, 1982. Though those 33 persons were not qualified as on the specified date, they were yet interviewed pursuant to certain instructions given by the Government and selected alongwith some other candidates. Certain candidates who were fully qualified to apply for the said post, filed a writ petition in the Jammu and Kashmir High Court contending that the 33 respondents could not have been allowed to appear for the interview because they had not acquired the requisite academic/technical qualification by the prescribed date. The writ petition was dismissed by the High Court. The Supreme Court after noticing the earlier decision rendered in the case of REKHA CHATURVEDI (Smt.) v. UNIVERSITY OF RAJASTHAN AND OTHERS, JT 1993(1) SC 220, has held that the eligibility of the candidates has to be judged with reference to the date by which application is to be filed and a person who acquires the prescribed qualification subsequent to such prescribed date, cannot be considered at all.

10. In the case of YOGENDRAKUMAR R.RAVAL (Supra), the

Court on interpretation of rules 4 & 5 of the present Rules has held that the word "recruitment" used in the explanation cannot mean appointment. While placing the said interpretation, reliance is placed by the Court on the decision of the Supreme Court rendered in the case of A.P.PUBLIC SERVICE COMMISSION vs. B. SHARATCHANDRA, 1990(2) S.C.C. 669. We may mention that in PATEL JATINKUMAR HIRABHAI (Supra) the issue which is raised in the present petition came to be considered by the Court with reference to this very advertisement issued by the respondent on September 22, 1994 and after considering the relevant law on the point, learned Single Judge has dismissed the petition filed by the petitioners. The said judgment has become final in the sense that it was not challenged before higher forum. Under the circumstances, the phrase, "the first July of the year in which the recruitment is made" cannot be construed to mean the year in which actual appointments are made and the petitioners cannot be granted relief on that basis. Merely because the petitioners had attained 18 years of age either on the date of issuance of the advertisement or on the date of interviews and/or selection, would not make them eligible as they had not attained the age of 18 years on July 1, 1994. Therefore, the petitions cannot be accepted. Even if the contention urged by the petitioners that the phrase "the first July of the year in which the recruitment is made" should be construed as the year in which actual appointments are made, is accepted, the petitioners are not entitled to any relief because the appointments were actually made in the year 1994 itself. We may notice that when the advertisement was issued in the year 1994, most of the candidates who had not attained the age of 18 years on July 1, 1994, must not have made applications on the understanding that they had not attained the age of 18 years as on 1.7.1994 and were, therefore, ineligible for being considered. Granting of relief to the petitioners would amount to doing injustice to several such candidates and, therefore, no relief can be granted to the petitioners.

11. On totality of the facts and circumstances of the case, we are of the view that prescription of date July 1, 1994 in the advertisement is perfectly in consonance with the statutory provisions of the rules and is neither arbitrary or illegal in any manner. As the petitioners had not attained the age of 18 years on July 1, 1994, they could not have claimed appointment to the post of primary teachers. Under the circumstances, no direction can be given to the respondents to appoint the petitioners to the post of primary teachers. The reliefs

claimed in the petitions, therefore, cannot be granted and the petitions are liable to be dismissed.

For the foregoing reasons, both the petitions fails. Rule is discharged in each of the petitions, with no order as to costs. Interim relief granted in each petition is hereby vacated.

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